

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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75-7218

United States Court of Appeals

For the Second Circuit.

PUBLIC SERVICE MUTUAL INSURANCE COMPANY,
Plaintiff-Appellee,

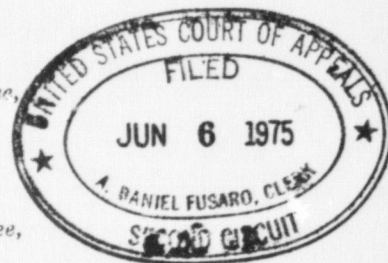
against

UNITED STATES OF AMERICA,
Defendant-Appellee,

and

DONALD GRUSKOFF,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.



APPENDIX.

SAMUEL STONE,
Attorney for Defendant-Appellant,
150 Broadway,
New York, N. Y. 10038

JULIUS GANTMAN,
Attorney for Plaintiff-Appellee,
393 Seventh Avenue,
New York, N. Y. 10001

GARLAND C. TANKS,
*Assistant United States Attorney, General Litiga-
tion Section, Tax Division, Attorney for
Defendant-Appellee,*
United States Department of Justice,
Washington, D. C. 20530

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EXHIBITS FOR DEFENDANT:

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UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

-----X

PUBLIC SERVICE MUTUAL INSURANCE COMPANY,

Plaintiff-Appellee,

-against-

UNITED STATES OF AMERICA,

Defendant-Appellee,

and

DONALD GRUSKOFF,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK.

-----X

DOCKET ENTRIES.

Date	FILINGS PROCEEDINGS
3/18/73	COMPLAINT filed-summons issued.
4-12-73	Summons returned and filed/executed as to Atty General.
4-24-73	Supplemental summons issued.
5-9-73	ANSWER of deft U.S.A. to complaint
6-18-73	ANSWER of Donald Gruskoff and Counterclaim filed.
6/19/73	Supplemental Summons returned & filed/unexecuted.
10-26-73	Before BRUCHHAUSEN, J.--Case called for pre trial conference. adjd to 1-11-74.
10/31/73	Notice of Taking Deposition and Request for Documents filed
1/11/74	Before BRUCHHAUSEN, J. - Case called Adjd to 2/15/74
1-24-74	Notice of motion to compel deft Gruskoff to pay atty fees, to strike Gruskoff's pleading, etc., ret 2-8-74 at 10 A.M. filed.
2-8-74	Before BRUCHHAUSEN, J.--Case called on deft's motion to strike pleading to dismiss, etc. & to compel defts to pay attys' fees. Adjd to 3-1-74.

DOCKET ENTRIES

Date	FILING PROCEEDINGS
2-15-74	Before BRUCHHAUSEN, J. - Case called & adj'd to 3-1-74.
3/1/74	Before BRUCHHAUSEN, J.- Case called Adj'd to 3/15/74
3-5-74	Copy of letter from George F. Lynch to Samuel Stone dtd 2-28-74 filed
3/15/74	Before BRUCHHAUSEN, J.-Case called - Adj'd to 5/17/74-Motion granted on consent (motion to dismiss)
3-26-74	By BRUCHHAUSEN, J.-Order dtd 3-26-74 granting deft U.S.A.'s motion to strike pleading of Donald Guskoff and dismissing him from complaint filed. Said order shall be stayed until 5-17-74 at 10 A.M. provided Gruskoss appears in person at deposition. (p/c mailed to attys).
5/17/74	Before BRUCHHAUSEN, J.-Case called - Withdrawn - Adj'd to 6/26/74
6/3/74	Notice of taking deposition and request for documents filed.
8/30/74	Deposition of Donald Gruskoff filed. Post Cards mailed to the attys.

DOCKET ENTRIES

Date	FILING PROCEEDINGS
10/4/74	Before BRUCHHAUSEN, J.-Case called - Adj'd to 12/3/74 for trial
10-16-74	By BRUCHHAUSEN, J.-Order dtd 10-16-74 setting 12-3-74 at 10 A.M. for trial filed.
12-3-74	Before BRUCHHAUSEN, J.-Case called. Trial commenced and concluded. Post trial briefs due 1-30-75. Decision reserved
12-6-74	Stenographers transcript dtd 12-3-74 filed.
1/15/75	Post Trial Brief of the U.S.A. filed.
1-20-75	Deposition transcript dtd 11-15-75 filed. (U. S. A.)
1-20-75	Memorandum of Law filed.
2-3-75	Reply brief of U.S. filed.
2-5-75	Post trial reply memorandum of Donald Gruskoff filed.
2-6-75	By BRUCHHAUSEN, J.-Memorandum and order dtd 2-6-75 that the impleaded fund is the property of Ray Daniels, etc. filed. Findings of fact and conclusions of law to be settled on five days' notice. (see order).

DOCKET ENTRIES

Date

FILING PROCEEDINGS

3-25-75 BY BRUCHHAUSEN, J. - JUDGMENT dtd
3-25-75 directing pltff to pay
U. S. A. \$50,000 and dismissing action
against Donald Gruskoff etc. filed.
(p/c mailed to attys).

4-4-75 Notice of appeal filed. Copy sent
to C of A. Hn

COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT: NEW YORK

-----X
PUBLIC SERVICE MUTUAL INSURANCE COMPANY

Plaintiff

INDEX # 73C330

against

UNITED STATES OF AMERICA and DONALD
GRUSKOFF

Defendants
-----X

Plaintiff as and for its complaint in an interpleader action
sets forth and alleges:

1. This action is commenced pursuant to the authority of
Title 28 U.S. Code Section 2410. It is an interpleader action
wherein the plaintiff holds moneys upon which the Internal Revenue
Service of the Department of the Treasury of the United States of
America claims a lien. The matter in controversy exceeds, exclusive
of interests and costs, the sum of \$10,000.00.

2. That the plaintiff issued its bail bond No. 90B18267 in
connection with the release from custody of one Raymond Daniel.

3. That as collateral in connection with writing said bail
bond, plaintiff received the sum of \$50,000.00 from the defendant,
Donald Gruskoff.

4. That the plaintiff delivered its collateral security receipt
and agreement bearing No. 13402 to the defendant, Donald Gruskoff.
A copy of this receipt is annexed hereto.

5. That the bail bond above referred to has terminated and

COMPLAINT

the plaintiff is ready, willing and able to return the collateral.

6. That the plaintiff has received from the Internal Revenue Service of the Department of the Treasury, a notice of levy and demand, a copy of which is annexed hereto, claiming a lien on the sum plaintiff holds as collateral.

7. That the Internal Revenue Service of the Department of the Treasury claims to be entitled to the collateral pursuant to an assessment dated 10/29/71 bearing identifying No. 11-647296-2001.

8. That the defendant, Donald Gruskoff has demanded the return of said collateral.

9. By reason of these conflicting claims of the defendant, plaintiff is in great doubt as to which defendant is entitled to be paid the amount the plaintiff holds as collateral.

WHEREFORE, plaintiff demands that the Court adjudge:

1. That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of the collateral held by plaintiff.

2. That the defendants be required to interplead and settle between themselves their rights to the money due as collateral held by the plaintiff and that the plaintiff be discharged from all liability except to the person or governmental body whom the Court shall adjudge entitled to the amount of the collateral held by the plaintiff.

3. The plaintiff recover the costs and disbursements of this action, together with and besides reasonable attorney's fees in-

8a

COMPLAINT

curred in the commencing of this action and its prosecution.

SAMUEL D. MUNY
Attorney for Plaintiff
393 Seventh Avenue
New York, New York 10001
212-556-8603

ANSWER OF DEFENDANT DONALD GRUSKOFF.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
PUBLIC SERVICE MUTUAL INSURANCE COMPANY

Plaintiff

against

INDEX # 73C 330

UNITED STATES OF AMERICA, and DONALD
GRUSKOFF

Defendants
-----X

Defendant DONALD GRUSKOFF, as and for its answer to the
complaint, for a COMPLETE DEFENSE and COUNTERCLAIM, alleges:

1. That the notice of levy and demand, issued by the Internal
Revenue Service of the Department of Treasury does not relate to
nor does it affect the rights and property of the defendant DONALD
GRUSKOFF.

2. That defendant has made demand upon the plaintiff for the
return of his property for which the plaintiff delivered its
collateral receipt.

3. That the collateral, \$50,000.00, belonging to the defend-
ant DONALD GRUSKOFF, is not subject to the assessment dated Oct-
ober 29, 1971, and bearing identifying No. 11-647296-2001.

WHEREFORE, defendant DONALD GRUSKOFF, demands judgment
against plaintiff, dismissing the complaint, with costs; that
defendant DONALD GRUSKOFF have judgment against plaintiff for the
sum of \$50,000.00 with interest from November 17, 1971, together
with the costs and disbursements of this action.

10a

ANSWER OF DEFENDANT DONALD GRUSKOFF

Attorney for Defendant
DONALD GRUSKOFF
Office and P.O. Address
150 Broadway
New York, New York 10038

5. The defendant, United States of America, is without suffi-

ANSWER OF DEFENDANT UNITED STATES OF AMERICA

cient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint.

6. The defendant, United States of America, admits the allegations contained in paragraph 6 of the complaint.

7. The defendant, United States of America, admits the allegations contained in paragraph 7 of the complaint except that the identifying number should be 11-647296-20001 instead of 11-647296-2001.

8. The defendant, United States of America, is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint.

9. The defendant, United States of America, admits allegations contained in paragraph 9 of the complaint.

10. The defendant, United States of America, denies that plaintiff is entitled to costs and attorney fees to the extent that such costs and fees would diminish the claim of the United States of America.

SECOND DEFENSE

By way of further answer, the defendant, United States of America, alleges as follows:

11. The defendant, United States of America, alleges that the defendant DONALD GRUSKOFF is a mere nominee of the taxpayer, Ray Daniels, a/k/a Dutch Schultz, a/k/a/ John Clark, a/k/a Evans with respect to the \$50,000.00 which was paid to the plaintiff as collateral security for issuing bail bond No. 90-B-18267 and that

ANSWER OF DEFENDANT UNITED STATES OF AMERICA

16. Notices of federal tax liens reflecting a tax due of \$719,694.10 were filed with the Register's Office, Bronx County, New York and Register's Office, Kings County, New York, on October 29, 1971 and with the Register's Office, New York County, New York on November 3, 1971.

17. On April 21, 1972, a Notice of Levy in the amount of \$761,839.75 was served on the plaintiff Public Service Mutual Insurance Company. levying upon all property and rights to property in the possession of the plaintiff, belonging to the taxpayer, Ray Daniels, a/k/a Dutch Schultz, a/k/a John Clark a/k/a Evans including the interpleaded funds and all sums of money or other obligations owed by the plaintiff to the said taxpayer, Ray Daniels, a/k/a Dutch Schultz a/k/a John Clark a/k/a Evans.

18. On January 23, 1973, a Notice of Levy in the amount of \$718,694.10 was served on the plaintiff, Public Service Mutual Insurance Company. levying upon all property and rights of property in the possession of the plaintiff belonging to Donald Gruskoff, as nominee of Ray Daniels, a/k/a Dutch Schultz, a/k/a John Clark a/k/a Evans including the interpleaded funds and all sums of money or other obligations owed by the plaintiff belonging to Donald Gruskoff, as nominee of Ray Daniels, a/k/a Dutch Schultz a/k/a John Clark a/k/a Evans.

WHEREFORE, the United States of America prays as follows:

A. That this court find and adjudge that the United States of America has valid and subsisting liens against all property and

ANSWER OF DEFENDANT UNITED STATES OF AMERICA
rights to property belonging to the taxpayer, Ray Daniels a/k/a
Dutch Schultz a/k/a John Clark a/k/a Evans.

B. That this court determine that the \$50,000.00 given as
collateral security for issuing bail bond No. 90-B-19267 all as is
more specifically mentioned in the complaint is the property of
the taxpayer Ray Daniels a/k/a Dutch Schultz a/k/a John Clark
a/k/a Evans .

C. That this court determine the priorities of the claimants
to the interpleaded funds and distribute the funds accordingly.

D. That the United States of America be granted such other
and further relief as the Court may deem just.

Dated: Brooklyn, New York
May 9, 1973

ROBERT A. MORSE
United States Attorney
Eastern District of New York

BY:

GEORGE H. WELLER
Assistant United States
Attorney

OF COUNSEL:

GARLAND C. TANKS, ESQ.
Trial Attorney
General Litigation Section
Tax Division
U.S. Department of Justice
Washington, D.C. 20530

TRANSCRIPT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

PUBLIC SERVICE MUTUAL INSURANCE COMPANY, :

Plaintiff :

-against- : 73-C-330

UNITED STATES OF AMERICA and :
DONALD GRUSKOFF,

Defendants :

-----x

United States Courthouse
Brooklyn, New York

December 3, 1974
11:30 a.m.

B e f o r e

HONORABLE WALTER BRUCHHAUSEN

U. S. D. J.

(IN CHAMBERS)

SHELDON SILVERMAN
Acting Official Court Reporter

Appearances:

SAMUEL D. MUNEY, Esq.
Attorney for Plaintiff
393 Seventh Avenue
New York, N.Y. 10001

By: ABNER B. ROSENTHAL, Esq., of counsel

GARLAND TANKS, Esq.
Department of Justice
Tax Division, Gen. Lit.
Washington, D.C. 20530
For Defendant United States

SAMUEL STONE, Esq.
150 Broadway
New York, N.Y. 10038
and
JAMES J. CALLY, Esq.
For Defendant Gruskoff

1
2 THE CLERK: Public Service Mutual Insurance
3 Company against the United States of America and
4 Donald Gruskoff, on trial.

5 THE COURT: This is your motion, gentlemen?

6 THE CLERK: More or less of a hearing before
7 trial, Judge.

8 THE COURT: We have witnesses on it?

9 THE CLERK: We don't know.

10 THE COURT: Are there witnesses in this?

11 MR. ROSENTHAL: On behalf of the plaintiff,
12 the plaintiff would like to enter into a stipulation.
13 The plaintiff, Public Service Mutual Insurance Company,
14 issued a bail bond for one Ray Daniels. As collateral,
15 in connection with this bail bond, it did receive
16 the sum of \$50,000 and gave its collateral receipt
17 to Donald Gruskoff.

18 When the time came that the bail bond had
19 been terminated and Public Service Mutual Insurance
20 Company was ready, willing, and able to return the
21 collateral, they found that claims had been made
22 to this money, both by Mr. Gruskoff and by the
23 United States Government in connection with a tax
24 lien.

25 Discretion being the better part of valor,

1 this interpleader action was pleaded by plaintiff,
2 who asserts the position that it has \$50,000, to
3 which it makes no claim, except at this point for
4 out-of-pocket expenses in connection with the com-
5 mencement of this action and with reasonable
6 attorneys' fees for the commencement of this action.

7 Other than that, the plaintiff is again ready,
8 willing and able to pay this money as the Court may
9 direct.

10 THE COURT: Does that include --

11 MR. ROSENTHAL: Actually concludes the
12 plaintiff's position.

13 THE COURT: Does anybody else wish to be heard?

14 MR. STONE: If your Honor pleases, I'm the
15 attorney of record for Donald Gruskoff.

16 THE COURT: That's for one of the defendants.

17 MR. STONE: One of the defendants, your Honor.
18 I had retained one James Cally as my of-counsel.
19 Mr. Cally is most familiar with this matter. He
20 has been a little --

21 THE COURT: You're Samuel Stone?

22 MR. STONE: Mr. Cally has been delayed a
23 bit in arriving this morning. I do not have any
24 part of the file in my possession at this moment,
25 but in order to expedite this matter, until such

1 time comes when perhaps Mr. Gruskoff will be
2 required to take the stand, I hope to delay it until
3 Mr. Cally does arrive.

4 THE COURT: Is he here now?

5 MR. STONE: No, he's on his way here.

6 THE COURT: If the matter can be expedited
7 until he arrives here, I haven't any objection to
8 the matter proceeding.

9 Is there anyone else that has anything to say?

10 MR. TANKS: Your Honor, my name is Garland
11 Tanks. I'm here on behalf of the United States
12 Government. I object to the delay of the matter,
13 in that your Honor --

14 THE COURT: What's your name?

15 MR. TANKS: Garland Tanks. Your Honor, the
16 history of this case would reveal that there have
17 been many, many delays. Just by way of summary,
18 the complaint in this case was filed on March the
19 12th, 1973; the United States answered on May 9th.

20 On October 29th, 1973, the Government mailed
21 to defendant Donald Gruskoff a notice of deposition
22 and request for production of records to be held on
23 November the 30th, 1973, at 2:00 p.m. in the United
24 States Attorney's office, Room G-80.

25 Pursuant to this, I appeared to take the

1 deposition. We had a court reporter there. Neither
2 the defendant nor his attorney appeared for that
3 deposition. No explanation was given. We attempted
4 to call his office, no response.

5 Again on January 15th, 1974, the United States
6 motion to strike the pleading of Donald Gruskoff
7 and to dismiss Donald Gruskoff, or, in the alternate
8 compel the deposition.

9 The hearing was held on that case, and an
10 order was granted; however, the order contained a
11 proviso it would be stayed until May 17th, 1974,
12 provided that Donald Gruskoff would appear and
13 substantiate why he did not comply with the discovery.

14 He showed and gave an explanation, and the
15 matter was continued. Even as to date, there was
16 an order issued from this court and all parties were
17 to appear at ten o'clock today.

18 Now, I sent a copy of this by certified mail,
19 return receipt. I have copies of the return state-
20 ments from the post office, which reflect that a
21 hearing was to be held at ten o'clock today, on this
22 matter. Up until this time, I have heard nothing
23 to the contrary from either Mr. Cally or Mr. Stone
24 that they would not be available and it just seemed
25 to me, your Honor, the history of this case has

1 indicated there has been substantial delays without
2 explanation, and I think perhaps it is time, your
3 Honor, that the case be disposed of one way or the
4 other.

5 This morning we were waiting -- well, up
6 until approximately this time, and --

7 THE COURT: Where does he come from?

8 MR. STONE: If your Honor pleases, I was with
9 Mr. Cally this morning at seven o'clock. Mr. Cally
10 had a matter on, I think, at about 9:15, and he asked
11 me to be down here at a quarter after 10:00 the latest
12 because we thought it was on for 10:30.

13 In any event, I had three other matters on
14 today, and I continued every one of the other matters
15 to arrive here in time; however, if Mr. Tanks feels
16 that we're looking for any further delays, I can ease
17 his mind. We're ready to proceed.

18 THE COURT: Where does Mr. Gruskoff live?

19 MR. GRUSKOFF: I live in Brooklyn. I was here
20 at a quarter to nine this morning.

21 THE COURT: O.K. Are you the witness in this
22 case?

23 MR. STONE: He was one of the defendants. The
24 one not here right now is my of-counsel.

25 THE COURT: Are you ready to proceed?

1 MR. STONE: I don't have the file, but I'll
2 play it by ear.

3 THE COURT: That's your associate?

4 MR. STONE: That's right, your Honor.

5 THE COURT: What do you say? Are you ready
6 to proceed now?

7 MR. STONE: I'm ready to proceed.

8 THE COURT: Are you examining this witness?

9 MR. TANKS: I would like to.

10 THE COURT: This defendant?

11 MR. TANKS: I would like to.

12 THE COURT: Will you rise and raise your right
13 hand.

14 MR. STONE: If your Honor pleases, if there
15 is any other testimony that the Government has re-
16 lating to this matter, is it possible to have that
17 other matter introduced first because I know that
18 Mr. Cally is on his way, your Honor. There is no
19 intent on anybody's part here to delay this pro-
20 ceeding. We're very anxious to conclude this matter
21 as well as Mr. Tanks.

22 THE COURT: Where is Mr. Cally coming from?

23 MR. STONE: From the Bureau of Immigration.
24 He had a matter that was supposed to take him ten
25 minutes, your Honor. I called his office.

1 THE COURT: Where is that?

2 MR. STONE: 20 Washington Place, New York City.

3 THE COURT: That's not far away.

4 MR. STONE: I know he's on his way here, your
5 Honor.

6 THE COURT: What do you say --

7 MR. STONE: One more interruption, if your
8 Honor pleases. I called his office and he called
9 his office and his brother stated that he's on his
10 way here. The only reason that I'm raising this
11 point right now, your Honor, I'm not familiar enough
12 with this matter to permit Mr. Gruskoff to be examined
13 now. I would rather that we waited until Mr. Cally
14 came.

15 THE COURT: Has he left there?

16 MR. STONE: He's already gone.

17 THE COURT: What time?

18 MR. STONE: A little after ten. I cannot
19 understand why he's not here.

20 I know he hasn't any other matters on, none
21 at all.

22 THE COURT: What do you say? Any comments?

23 MR. TANKS: Yes, your Honor. In view of the
24 fact that certain documents would be based upon the
25 testimony, I think that the proper thing to do or the

1 most expeditious thing to do would be the witness
2 to testify and then any exhibits placed in evidence
3 after he testified.

4 THE COURT: I would think that would be appro-
5 priate. If for any reason there is a necessity to
6 have him present, we can arrange that, at least.

7 MR. STONE: Except for one thing, your Honor.
8 Of the examination before trial that was taken of
9 Mr. Gruskoff, I do not have the transcript here,
10 and I have been unable to refresh his recollection
11 and as far as this examination -- I think it took
12 place about four or five -- perhaps six months ago.
13 I know that I don't recall what took place at this
14 examination. If Mr. Tanks would let us have a
15 copy of it, we can study it and then we can proceed.

16 MR. TANKS: I'd be most willing to let him
17 have a copy, your Honor (handing to Mr. Stone).

18 MR. STONE: Might I have about five minutes
19 with this, your Honor?

20 THE COURT: You may.

21 MR. STONE: Is this the corrected version?

22 MR. TANKS: There is only one version.

23 THE COURT: If you desire, you may retire to
24 the Clerk's office.

25 MR. STONE: Thank you, sir.

1 (Mr. Gruskoff and Mr. Stone leave the
2 chambers.)

3 (Recess)

4 THE COURT: Raise your right hand.

5
6 DONALD GRUSKOFF, called as a witness,
7 was duly sworn by the Court, and testified as follows:

8 THE COURT: You may be seated, Mr. Gruskoff.

9 THE WITNESS: Thank you, your Honor.

10 THE COURT: You may proceed, Counsel.

11 MR. STONE: I didn't put him on the stand;
12 you did, Mr. Tanks.

13 MR. TANKS: Very well.

14 DIRECT EXAMINATION

15 BY MR. TANKS:

16 MR. TANKS: May it please the Court, just by
17 way of background, this case involves some \$50,000
18 that, as previously indicated by counsel for the
19 plaintiff, was put up for bail bond of an individual
20 who has been known as Ray Daniels, also known as
21 Dutch Schultz, also known as John Clark, also known
22 as Evans.

23 Q Mr. Gruskoff, did you obtain \$50,000 to be
24 posted as a bond, which is the subject of this interpleaded
25 matter?

Gruskoff-direct

A Did I get \$50,000?

THE COURT: You may read the question.

(Record read by the Court Reporter.)

THE COURT: Please re-ask the question.

Q Mr. Donald Gruskoff, did you obtain \$50,000 to be posted as a bond and which is the subject matter of this interpleaded action?

A Yes, sir.

Q When did you obtain the \$50,000?

A In November 1971.

Q Sir, do you recall what date in November?

A Not the exact date; around Thanksgiving, before Thanksgiving.

Q What was the source of this \$50,000 that was put up for the bond?

A You mean where did I obtain it?

Q Yes.

A Yes, sir, from my father, William.

Q Was there any agreement between you and the father with regard to this \$50,000? In other words, was there a loan or some statement or some indication that you obtained this \$50,000 from your father?

A A written document?

Q Yes, sir.

1
2 A No, sir.

3 Q Could you explain for the Court the facts
4 surrounding your obtaining this \$50,000?

5 A Yes. During the early sixties, into the late
6 sixties, I had a problem with gambling and alcohol, and
7 I had a race track friend or someone that I had gambled
8 with, a fellow named Teddy Johnson, who, when I was young
9 and perhaps more foolish, bailed me out of a situation
10 in the sixties, and had never, you know, asked for anything
11 in return. He's a big gentleman. He had come to me and
12 mentioned that he had a friend that was in a problem and
13 that he was facing state charges and he indicated that it
14 was not a very important matter, but that there was vindic-
15 tiveness between the District Attorney, city District Attor-
16 ney and Mr. Daniels, and he wanted to know if I could post
17 bond, and he promised me ten percent interest, plus, you
18 know, any fees involved that would be involved in posting
19 a bond and that the bond would be returned within a few
20 months and that it was not much of a case and he would be
21 released and I went to my father and my father and I had a
22 very long -- let's say rocky relationship because of my
23 problems, and he was reluctant, but he had been carrying me
24 through the years and he didn't want to give me the money.

25 We went over it and then he realized that

1
2 it would be a bond placed with an insurance company, and
3 he thought perhaps it was a safe investment, and it was a
4 state case, and the circumstance surrounding it didn't seem
5 too onerous. He wouldn't give it to me immediately, but
6 I told him that if we got the interest money I could use it
7 and perhaps it would be a way of earning something and he
8 gave it to me, I would say with some reluctance and words
9 and a lecture.

10 Does that answer?

11 MR. TANKS: May it please the Court, in
12 view of the fact that the defendant is a co-defendant,
13 we would like to have him declared as a hostile
14 witness.

15 THE COURT: That would be appropriate, I would
16 think.

17 MR. STONE: Excuse me, your Honor, hostile
18 to whom?

19 MR. TANKS: The United States.

20 MR. STONE: He's appeared for himself. He's
21 friendly for himself.

22 THE COURT: When you have two parties in-
23 volved, that's where a question of hostility may
24 come in when the Government is between them.

25 MR. STONE: No objection.

1
2 Q You say, you indicated you had a problem with
3 gambling and alcohol. What do you mean by that?

4 A Up until I would say a year or so ago, I was
5 drinking more than a quart of whiskey a day through a period
6 of a day, drinking for breakfast, lunch. I had a problem
7 with alcohol and in my early twenties, I was just betting,
8 you know, just hoping -- it's a sickness.

9 Q What do you mean when you say bet?

10 A Bet, go to the track, bet at the trotters,
11 at the flats, and then it just was not very good.

12 Q You indicated that you were promised a ten
13 percent interest on this \$50,000.

14 A Yes.

15 Q From Mr. Teddy Johnson, I believe.

16 A Right.

17 Q Did you receive any moneys as a result of this
18 ten percent promise for the lending of this money?

19 A No; no.

20 Q How long before you posted the bond did you
21 ask your father for this money?

22 A Approximately a week to ten days before --
23 I don't know, about that.

24 Q I believe on previous testimony you indicated
25 that your father died; is that correct?

1
2 A Yes, he did.

3 Q What date?

4 A November 10th, 1973.

5 Q Where was your father living at the time of
6 his death?

7 A 1177 East 98th Street, Brooklyn, New York.

8 Q Was this an apartment or house?

9 A It's an apartment building. It's an apartment
10 within an apartment building.

11 Q Did he own a house at the time of his death?

12 A At that time, no.

13 Q Do you know from your own knowledge whether
14 your father owned any other asset or property at the time
15 of his death?

16 A Do you mean real estate?

17 Q Real estate, or any property.

18 A I don't know, no.

19 Q How long had you known Mr. Ray Daniels prior
20 to the time --

21 A I never knew Mr. Ray Daniels.

22 Q In other words, you put up -- allegedly
23 obtained the \$50,000 to put up the bond for Mr. Ray Daniels
24 but you did not know him?

25 A Right. Mr. Johnson acted as an intermediary.

1
2 THE COURT: What's that name?

3 MR. TANKS: Ray Daniels.

4 Q Have you ever advanced or loaned any other
5 individuals any money in excess of \$10,000?

6 A No.

7 Q I believe you're alleging in this case the
8 \$50,000 in issue was the money of your father; is that
9 correct?

10 A Excuse me?

11 Q You're alleging the \$50,000 that is involved
12 in this case is the money of your father; is that correct?

13 A That's correct.

14 Q Do you know whether your father filed an estate
15 tax return form 706 --

16 A Excuse me.

17 Q Do you know whether or not your father filed
18 an estate tax return?

19 A On his estate?

20 Q Estate tax return.

21 A No, I don't know.

22 MR. TANKS: Might I have the Court's indul-
23 gence for a minute?

24 THE COURT: Yes.

25 (Pause)

1
2 Q Do you know the present whereabouts of Mr.
3 Ray Daniels?

4 A Well, I know that he went to jail. I don't
5 know where he is.

6 Q Do you know what the total amount of the bond
7 that was posted for Mr. Daniels was?

8 A No, I don't.

9 Q Do you know whether moneys other than the
10 \$50,000 was posted?

11 A I don't.

12 Q When you posted the \$50,000 was it in the
13 nature of cash, check, or what?

14 A Cash.

15 Q What type of person would you describe your
16 father to be, conservative, liberal, as far as --

17 A Politically?

18 Q No, not politically, but as far as advancing
19 money to you is concerned.

20 A I guess my father was very liberal toward me
21 because he was very ill and I took care of him and my sister
22 and brother were married. My brother is deceased and I guess
23 we were more than father and son. We were very close, as
24 friends.

25 Q What occupation did your father have?

Gruskoff-direct

19

1
2 A He was an attorney. He speculated in land.
3 Ran all over. He was a pretty sick man in the last decade.
4 He was quasi-active.

5 MR. TANKS: For the record, your Honor,
6 I would like to exemplify or show the witness a
7 deposition that was dated June 7th, 1974. On page
8 27 of this deposition, wherein I propounded a ques-
9 tion to the witness, to attempt to refresh his
10 memory with regard to the total amount of bond
11 posted on behalf of Mr. Ray Daniels (indicating):

12 "Question: Do you know the total amount of
13 bail that was posted for Mr. Daniels?

14 "MR. CALLY: In other words, how large was
15 the bond that had to be posted so Mr. Daniels could
16 come out of prison?

17 "Answer: I do not know what the total bond
18 that was finally posted, but I was told the original
19 amount was \$100,000."

20 Q Do you recall that conversation now?

21 A What Mr. Cally said then?

22 Q No, sir. This was your answer, not Mr. Cally's
23 answer.

24 A I didn't post \$100,000 bond.

25 Q No, sir, that wasn't the question. The question

1
2 was how much was posted.

3 A \$50,000.

4 Q You said \$50,000 was the total amount of bond
5 posted for Mr. Ray Daniels --

6 A The amount I posted was \$50,000.

7 Q I understand that, sir. I'm asking you what
8 was the total amount posted for the bond of Mr. Ray Daniels.

9 A But I don't know that. I mean, I was told
10 the bond was \$100,000. If you're asking me how much was
11 posted, I don't know what the total amount was.

12 Q I think the question is which is the truth,
13 the answer you gave in the deposition or the answer you are
14 giving now?

15 MR. STONE: Objection, your Honor. The wit-
16 ness has just stated that he did not know but that
17 he learned that it was \$100,000.

18 MR. TANKS: Your Honor, there seems to be
19 inconsistency in the testimony he is giving now and
20 the testimony he gave at the deposition on June 7th,
21 1974.

22 A Not the way I understand your question. The
23 question you're asking me is how much bond and money did I
24 post. You're also asking me how much money was posted for
25 him. I do not know how much money was posted for him.

1
2 Q Didn't you say that the answer was that given
3 at the deposition was an incorrect answer?

4 A The total bond that was finally posted --
5 that should have read, and there was a corrected --

6 Q Where are you reading now?

7 A From your deposition.

8 MR. STONE: 27, line 16.

9 A It said, "I don't know what the total bond was
10 that was finally posted, but I was told that the original
11 amount was \$100,000." but I do not know if that was --
12 You're asking me what I posted. I don't know if there was
13 another \$50,000 in cash or if the bond was finally \$100,000.

14 (Mr. James J. Cally enters the chambers)

15 MR. CALLY: I'm sorry, Judge.

16 (Recess)

17 THE COURT: You may proceed, gentlemen.

18 DIRECT EXAMINATION (CONTINUED)

19 BY MR. TANKS:

20 Q Mr. Gruskoff, do you know what the source of
21 the \$50,000 that your father allegedly loaned you to be
22 posted as a bond in this case was?

23 A Where my father got the \$50,000?

24 Q Yes, sir.

25 MR. CALLY: I'm going to object to that, if

1
2 your Honor please. I don't think that's relative
3 or germane to the issue.

4 THE COURT: Well, I'll allow it.

5 MR. CALLY: Exception.

6 THE COURT: Although it's general.

7 A Yes, I would say my father, who passed away
8 at the age of sixty-seven and my mother, who worked through
9 her teen years and --years, accumulated money. My father
10 sold two homes and through the years, he put away a few
11 dollars. He had an aversion to stock markets because of
12 his parents. I think we went into that once before and
13 whatever it is, when it came time for rent, I handled the
14 bookkeeping. He would give me money to pay household bills,
15 etc., etc., and pocket money and money to visit my sister,
16 which I used. It wasn't Brewster's millions, but we had
17 money in the house, yes.

18 Q You indicated your father sold a home. What
19 year or years did it involve?

20 MR. CALLY: I'm going to object to this,
21 if your Honor please. I don't think the year or
22 anything that's relevant to it -- the question was
23 asked how come -- or where the source of funds came.
24 The answer was given. He's bound by the answer.

25 THE COURT: I'll allow it.

1
2 MR. CALLY: All right, exception.

3 THE COURT: Many times, on these questions
4 or answers, if it's irrelevant later on, it can be
5 disregarded.

6 A Well, I believe 1961, about that, or early '62
7 he sold the house in Brooklyn and then he remarried and
8 he had a home in Merrick, and he sold that -- I'm not sure,
9 for '64 or '65 exactly -- he was divorced, so they sold
10 the house.

11 Q Do you recall the amount --

12 A No, sir.

13 Q When you received this \$50,000, what did you
14 do with the money?

15 A I didn't take the subway; I took it in an
16 automobile. I took it downtown to a bail bondsman. I don't
17 know the name of the street. It's around the corner from
18 Schmerhorn Street, Newman and Rabinowitz -- Rabinowitz &
19 Newman? I'm not sure of the bondsman's name; something like
20 that. I presented the cash. They issued me a document
21 which I held, and when there was a disposition on the case --
22 is that what it's called? to Mr. Daniels' case, I saw it
23 in the newspaper, I filed to reclaim the bond.

24 MR. CALLY: Reclaim the money.

25 A I'm sorry, on the terminology, to reclaim

1
2 the money. I was informed by the insurance company that the
3 Government had filed a lien or levy; I'm not sure which is
4 which, on the money and I contacted the Internal Revenue
5 Service, and they set up an appointment for me and they
6 took a sworn statement from me downstairs here, I think,
7 in the Intelligence Division, a Mr. Rothstein and I don't
8 remember the other agent's name. He was present earlier to-
9 day. I don't remember his name.

10 Then they asked for permission to speak to
11 my father, and I did. I said one condition; my father was
12 terminally ill at that time. I don't know the medical term
13 for it, but his skin was losing its ability to retain water.
14 He was in the final throes of heart disease. He was pretty
15 much incapacitated.

16 I said provided they went gently and they kept
17 to those terms and they came to the house and they took a
18 statement from him and I don't have a copy of that state-
19 ment, but I'm sure it's here, and then that was it.

20 Nothing happened. I was told by the agents
21 I think that I had to retain legal services and go through --
22 I don't know, legal motions and that's what I have done.
23 It's been going on for three years.

24 Q How long have you known this Teddy Johnson,
25 who approached you to advance the money on behalf of Mr. Ray

He said, "The man is one of the biggest

1
2 narcotics dealers in the city or country. You're a fool,
3 and you're going to have a lot of problems for this,
4 aggravation, and you'll be sorry," and he was right.

5 Q Where does Mr. Teddy Johnson live?

6 A Well, if you know anything about gamblers --

7 Q Unfortunately, I don't know about gamblers.

8 A He was -- In gambling, it's not unusual to
9 know someone by a first name basis. I knew his last name,
10 but to know somebody by a street name, nickname, you could
11 know them for years. You could see them at the track, dis-
12 appear, follow the horses to Baltimore, they can follow to
13 Naragansett, I'd never be in his home and he'd never be in
14 mine. He'd be in touch, meet him in a bar, many years ago
15 there used to be a good lounge in Brooklyn called the Town
16 Hill. That's where I met him in the early sixties, in my
17 college days. They had entertainment, jazz, music. I liked
18 that. I knew. I had seen him at the track. He was much
19 bigger than I am and I owed some money and he spoke up for
20 me and -- I owed him an obligation.

21 When he asked me to put up the money, he did
22 remind me that, you know, "I helped you out a few years
23 ago." He's not asking me to do anything illegal and could
24 I help them out. It meant a great deal to him, and I did.

25 After I posted the bond, I heard from him

1
2 once on the telephone. I asked him -- he asked me if
3 everything is o.k.

4 I said, "Everything is not o.k. You didn't
5 tell me about this.

6 "The District Attorney called me up. I never
7 have been in anything like that before."

8 That was the end of that.

9 Q What was the nature of the obligation? You
10 said you owed an obligation to him.

11 A I got in over my head with owing money, bor-
12 rowing money, for gambling and I couldn't pay, and, you know,
13 when -- it's like a sickness. When you get in, you always
14 hope you're going to make that one last bet, not only to
15 recoup what you have already lost but to carry you forward
16 to the next day, but only the track and bookmakers wind up
17 winning in the end. You can't, you just can't.

18 Q Do I understand your response is that Teddy
19 Johnson then loaned or advanced you money?

20 A No, he spoke up to some people and said,
21 "Look, you know, he's only a little fellow. Don't hurt him.
22 I'm sure he'll make good for it. I'll be responsible for
23 him, and I know him. He's good for his word. He'll work
24 it out some way."

25 Q Are you saying people would want to hurt you

1
2 because you owed money?

3 A Do you find that unbelievable?

4 Q Yes, sir, I'm afraid I do.

5 A Then I'm amazed. Then I'm genuinely amazed.

6 Q Were the people that you owed money to of a
7 questionable character; is that what you're saying?

8 A Absolutely.

9 Q Then it wasn't the normal or usual type of
10 money owed, but rather owed to whose dealing may be ques-
11 tionable or on the border of illegality?

12 A Yes, that was 1963-64, and I felt that living
13 and being in one piece was a much better option.

14 Q Do you know whether or not your father had any
15 other cash, let's say, in excess of \$3,000 or \$4,000 avail-
16 able in his house?

17 A In excess of \$3,000 or \$4,000?

18 Q Right.

19 A Yes, he did, of course.

20 Q How much?

21 A I don't know.

22 Q How do you know it was in excess of \$3,000 or
23 \$4,000?

24 A Because he would give me money. I would say,
25 "Dad," he's a terrible bookkeeper. I'm a good bookkeeper.

1
2 He's bad. I would do the shopping, make the beds, handle
3 everything. I would say it's very nice to pay, but I never
4 bounced checks.

5 I'd say, "Give me money," and he would give
6 me money.

7 Q He would give you cash or money from the bank?

8 A He would give me cash.

9 Q How do you know it was in excess of \$3,000
10 or \$4,000?

11 A Well, over a period --

12 Q Would he give you this amount of money at
13 one time?

14 A A lump sum? He would give me \$1,000, \$1500,
15 whatever I told him I needed to cover checks, I would say,
16 yes, normal household expenses, yes.

17 Q Normal household expenses would exceed
18 \$3,000 or \$4,000 at one time?

19 A I never said he gave me \$3,000 or \$4,000 at
20 one time. You're saying that.

21 MR. TANKS: That's the extent of my question-
22 ing at that time.

23 THE COURT: Any other questions of this witness?

24 MR. CALLY: I don't think so.

25 THE COURT: Very well, gentlemen.

1 MR. CALLY: Judge Bruchhausen, we took an
2 examination before trial of one of the agents,
3 Agent Rothstein.

4 MR. TANKS: That's correct.

5 MR. CALLY: We don't have that EBT before
6 us at the present time. We would like the opportunity
7 to submit it to your Honor.

8 THE COURT: All right.

9 MR. CALLY: We expected it in at this time.
10 Unfortunately, it never came in.

11 THE COURT: Is there any motion in this case
12 at this time?

13 MR. TANKS: In this case?

14 THE COURT: Yes.

15 MR. TANKS: No, your Honor, it's up for dis-
16 position -- the priority of the claims for the funds,
17 and disposition of the funds.

18 MR. CALLY: At this time, if your Honor pleases,
19 I move that the funds be turned over to the plaintiff.
20 There's no question about it --

21 MR. TANKS: I don't think you mean the
22 plaintiff .

23 MR. CALLY: I'm sorry. As between the two
24 defendants, I move the plaintiff, since the plaintiff
25 is a stake holder here, I move that the funds so

1 deposited and readily sustained and admitted, that
2 the funds be turned over to Mr. Gruskoff, the co-
3 defendant.

4 MR. TANKS: May it please the Court, I would
5 offer an objection in that the plaintiff -- Strike
6 that.

7 I would offer objection in that the co-
8 defendant, Donald Gruskoff, has not substantiated
9 he is entitled to this money.

10 THE COURT: I think it might be appropriate,
11 gentlemen, for you, the attorneys, to present memo-
12 randums in this case. That's the usual practice.

13 MR. CALLY: Yes, judge.

14 MR. TANKS: Are you through?

15 MR. CALLY: Yes.

16 MR. TANKS: In addition, your Honor, I have
17 two documents that I would like to have marked as
18 exhibits. I'm handing a copy of each one to the
19 defendant, for counsel for the defendant as well as
20 a copy to the plaintiff.

21 THE COURT: Is there any objection?

22 MR. CALLY: I'm going to object to this, if
23 your Honor please. We had no opportunity -- this is
24 a statement that's made by, I assume, one of the
25 agents or the District Director of the Internal

1 Revenue, is that right?

2 MR. TANKS: Yes.

3 MR. CALLY: We had no opportunity to interro-
4 gate this man in any way whatsoever, if your Honor
5 pleases.

6 MR. TANKS: May it please the Court, this
7 affidavit which co-defendant -- defendant Donald
8 Gruskoff--is an affidavit setting forth facts to
9 rebut the claim that the money is in fact that of
10 Donald Gruskoff, and also setting forth information
11 as to the amount of income that William Gruskoff,
12 Donald Gruskoff's father, allegedly the person who
13 had -- gave the money to Donald Gruskoff, and I
14 think it pretty well substantiates the basis of
15 this information. He could not have accumulated
16 that much money which is involved in this case here,
17 your Honor.

18 MR. CALLY: That's the very purpose, if
19 your Honor please. It's all conjectural. Nothing
20 to substantiate anything to the contrary than what
21 is said, if your Honor please. There is nothing
22 that rebuts the source of the funds that were
23 turned over to the insurance company, the plaintiff
24 in this matter, if your Honor pleases. This is
25 purely a self-declaratory statement.

1 THE COURT: This statement is made by what
2 representative?

3 MR. TANKS: District Director. Your Honor,
4 this statement, the affidavit -- the first statement,
5 two statements, the first one which is made by the
6 District Director of Internal Revenue, in Brooklyn,
7 the nature of that is that it sets forth an offering,
8 compromise, executed written agreement executed
9 between the Internal Revenue Service and Donald
10 Gruskoff on July 23, 19 -- Strike that. I'm sorry.

11 Between William Gruskoff and the Internal
12 Revenue Service on July 23, 1954.

13 THE COURT: You're quoting from records,
14 I assume; is that it?

15 MR. TANKS: These came from the records,
16 official Internal records.

17 THE COURT: Usual records of an office such
18 as that are admissible, but I would offer you the
19 opportunity to contest them.

20 MR. CALLY: Nineteen years after the fact.
21 This is in 1954, your Honor. What relation does that
22 have when these funds were given to a son, Donald,
23 the co-defendant in this action?

24 THE COURT: You may claim it's not relevant,
25 I assume. Is that it?

1 MR. CALLY: It's not relevant at all, what
2 transpired -- this was a settlement made in '54
3 for the years '53 to '46, according to the way I read
4 it, if your Honor pleases. Now, what that has to do
5 with the occurrence of nineteen years later is more
6 than I can understand, if your Honor pleases.

7 THE COURT: That's a question of relevance.
8 You're entitled to make that objection. I say that.

9 MR. TANKS: May it please the Court, on page
10 2 of this document, I think it sets forth what the
11 actual reported income of the taxpayer was from the
12 year of 1956 through 1962, and the gross income from
13 1966 through 1970.

14 MR. CALLY: Mr. Tanks, what his annual income
15 is for the purpose of taxes has nothing to do with
16 what increment he may have had on the sale of homes.
17 He may have had funds coming in all during the course
18 of these years, or how frugally he lived.

19 MR. TANKS: It's obvious, unless he had it from
20 illegal sources or other sources substantiated --

21 MR. CALLY: That's for you to sustain the
22 burden.

23 MR. TANKS: \$1800, 1968. Are you saying he
24 could have lived off \$1800 and accumulated that --

25 MR. CALLY: Yes, sir.

1 MR. TANKS: That is not in the record.

2 MR. CALLY: It doesn't have to be. You're
3 the one who has the burden of proof. So far --

4 MR. TANKS: We do not have. He has the bur-
5 den of proving the money is his father's. We're
6 rebutting him.

7 MR. CALLY: I'm sorry. As I understand the
8 law, Judge, the burden is on the Government to
9 assert that those funds are not the funds of the
10 co-defendant. That's the way, as I read the law.

11 MR. TANKS: The burden is on the co-defendant
12 to prove that money is his father's money, as he
13 has alleged.

14 THE COURT: Very well, gentlemen. You're
15 getting into differences of reaction on what the
16 law is. I would think, as I have mentioned, it
17 might be appropriate for you to submit memorandums.

18 MR. CALLY: We would be happy to submit a memo-
19 randum of law.

20 MR. TANKS: The other document, your Honor,
21 is a document under seal from the Social Security.
22 This, as you can see, is under seal. I made a copy
23 so they can see them. It's a document under seal,
24 which states that this information was taken from
25 the records, official records, and it indicates

1 the income from 1943 through 1970 of William
2 Gruskoff.

3 THE COURT: You're offering that in evidence?

4 MR. TANKS: Yes, I'm offering that.

5 MR. CALLY: I'm going to object to that,
6 if your Honor pleases.

7 THE COURT: I'll take it and, as I said
8 before, exhibits are sometimes necessary. They're
9 on relevancy.

10 MR. CALLY: Furthermore, there was the estate
11 of his first wife, which was passed over to him,
12 which had funds in it, substantial funds.

13 THE COURT: I come down to the fact it would
14 be helpful to submit memorandums on this.

15 MR. TANKS: Yes, your Honor.

16 MR. CALLY: Furthermore, I would like to
17 submit to your Honor that in the examination before
18 trial of Mr. Rothstein, the agent in this matter --

19 MR. TANKS: Revenue officer.

20 MR. CALLY: He stated unqualifiedly there
21 were no documents at all. I'm somewhat surprised
22 to see that they presented these documents to your
23 Honor today. They should have -- and as I read the
24 law, they should have told us, Judge, they had
25 certain documents, certain matters to meet so we

1 would be perfectly happy to have documents that
2 they had so we could rebut them and not waste your
3 Honor's time in this manner; however, he has taken
4 this road. If your Honor wants to give him the op-
5 portunity, that's perfectly all right with us. We'll
6 submit a memorandum.

7 THE COURT: That would be appropriate.

8 MR. TANKS: I would like to make one state-
9 ment. I think I would be remiss in my duty in
10 representing the United States if I would permit
11 counsel to make that statement. Counsel, if you
12 recall, your statement was not documents, but your
13 question was whether or not he had copies of any
14 other testimony that he took of Mr. Gruskoff.

15 MR. CALLY: I'm sorry, Mr. Tanks.

16 MR. TANKS: Furthermore, sir, this document
17 came -- if you want to put into evidence, I'll
18 say it came in air mail envelope, received just
19 yesterday. If you want an affidavit from Social
20 Security to that effect, we'll be more than happy.
21 This document was received yesterday up in the U.S.
22 Attorney's office.

23 MR. CALLY: Mr. Tanks, I submit, your Honor--
24 I'm not questioning Mr. Tanks' situation. What
25 I'm submitting to your Honor is that he's submitting

1 documents which are totally irrelevant.

2 THE COURT: This is just a documentation.
3 We have that very often with exhibits. As long as
4 they're legally admissible, the question of whether
5 they have any bearing and so forth, sometimes you
6 can immediately determine whether it's relevant
7 or not, but it's not that simple in a great many
8 situations, until you examine more all the facets
9 of it. Quite a few times I think I do, as other
10 judges do, give the opportunity of any attorney
11 later on after all is in, to move to reject an
12 exhibit that is marked in. It happens in many of
13 these situations.

14 Very well, we'll mark them in evidence and
15 then who is to serve a brief first on this?

16 THE CLERK: Affidavit --

17 MR. TANKS: The opponent should.

18 MR. CALLY: You serve your brief first.

19 THE CLERK: Affidavit of Charles Brennan,
20 sworn to the 11th day of November, '74, received
21 in evidence as Defendant United States of America
22 Exhibit No. A.

23 (So marked)

24 THE CLERK: Certification of extract from
25 records received in evidence as Defendant's Exhibit B.

1 United States Government.

2 (So marked)

3 THE COURT: Off the record.

4 (Discussion off the record.)

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AFFIDAVIT OF CHARLES H. BRENNAN (EXHIBIT A).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PUBLIC SERVICE MUTUAL INSURANCE
COMPANY

Plaintiff

CIVIL ACTION
NO. 73 Civ. 330

V.

UNITED STATES of AMERICA and
DONALD GRUSKOFF

A F F I D A V I T

Defendants

STATE OF NEW YORK)

: SS.:

COUNTY OF KINGS)

I, CHARLES H. BRENNAN being duly sworn depose and say:

1. I am the District Director of Internal Revenue, Brooklyn, District, and I am responsible for the collection of federal taxes within the said District. A search of the records of my office discloses the following:

2. On July 23, 1954, William Gruskoff submitted an offer-in-Compromise with respect to his income tax liabilities for the calendar years 1943 through 1946 in the aggregate amount of \$28,274.64. Mr. Gruskoff stated that the basis for his Offer was "insufficient income- unable to meet living expenses." The terms of the Offer were \$3,500.00; \$200.00 tendered with the Offer with the balance to be paid at the rate of \$35.00 per month while the Offer was under consideration, and \$50.00 per month from the date of acceptance of the Offer, until the amount of the offer was paid in full, together with 6 per cent annum on all deferred payments

AFFIDAVIT OF CHARLES H. BRENNAN (EXHIBIT A)

from the date of acceptance of the Offer. The Offer was accepted on February 15, 1956. As additional consideration for the Offer, William Gruskoff executed a collateral agreement with respect to additional payments from future annual income in excess of \$5,000 for the calendar years 1956 through 1965. The income reported by William Gruskoff, pursuant to the collateral agreement and the amount paid over in compliance therewith is as follows:

<u>YEAR</u>	<u>ANNUAL INCOME REPORTED</u>	<u>AMOUNT PAID</u>
1956	\$7,577.37	\$ 706.17
1957	7,546.67	747.52
1958	8,347.90	1,095.14
1959	7,883.41	887.99
1960	8,058.08	968.04
1961	8,009.97	904.99
1962	6,449.04	334.71
	53,872.44	

For the calendar years 1963, 1964 and 1965, no amounts were paid over by William Gruskoff, pursuant to the collateral agreement.

3. The amount of gross income reported by William Gruskoff on his individual income tax returns for the calendar years 1966 through 1970 is as follows:

<u>YEAR</u>	<u>GROSS INCOME REPORTED</u>
1966	\$ 883.12
1967	828.06
1968	1,804.00
1969	1,631.00
1970	1,423.00

4. Pursuant to an inquiry by the Andover Service Center, William Gruskoff stated on September 25, 1972 that he was not required to file an individual income tax return for the calendar

AFFIDAVIT OF CHARLES H. BRENNAN (EXHIBIT A)

year 1971 because his gross income was less than that required for being 65 or over.

William Gruskoff has not filed income tax returns for either calendar year 1972 or 1973.

5. An Estate Tax Return has not been filed for William Gruskoff.

District Director of Internal
Revenue Brooklyn District

Subscribed and sworn to before
me this 11 day of November, 1974

Notary Public

57a

DEPARTMENT OF HEALTH, EDUCATION & WELFARE
(EXHIBIT B).

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SOCIAL SECURITY ADMINISTRATION

BALTIMORE, MARYLAND 21235

CERTIFICATION OF EXTRACT FROM RECORDS

Pursuant to the provisions of Title 42, United States Code, Section 3505, and the authority vested in me by 32 F.R. 17550, 32 F.R.

17866, 33 F.R. 2613, and 34 F.R. 13046 as amended by 37 F.R. 10602,

I hereby certify that I have legal custody of certain records, documents, and other information established and maintained by the Department of Health, Education and Welfare, pursuant to Title 42, United States Code, Section 405, and that the annexed is a true extract from such records in my custody as aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Department of Health, Education and Welfare to be affixed this 29th day of November, 1974.

S. A. SCHUCK
Director, Division of
Adjustment Operations Bureau
of Data Processing

DEPARTMENT OF HEALTH, EDUCATION & WELFARE
(EXHIBIT B)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SOCIAL SECURITY ADMINISTRATION

BALTIMORE, MARYLAND 21235

REFER TO:

RECORD of earnings reported for William Gruskoff, social security number 054-01-3171, for the period January 1, 1943, through March 31, 1974.

<u>SOURCE OF EARNINGS</u>	<u>PERIOD ENDING</u>	<u>AMOUNT</u>
Max Jampolis 633 Broadway New York, New York	6/30/43	\$ 64.32
Ted's Mens Shop 206 Jericho Turnpike Floral Park, New York	12/31/44	\$ 175.00
Richard Lumber Co. 16th Ave. & 16th St. Brooklyn, New York	3/31/54 6/30/54 9/30/54 12/31/54	\$ 400.00 1,300.00 1,300.00 600.00
Richard Lumber Co.	3/31/55 6/30/55 9/30/55	\$ 1,500.00 1,925.00 775.00
Richard Lumber Co.	3/31/56 6/30/56	\$ 1,885.00 609.00
Donner Richard Lumber Co. 38-39 Flushing Avenue Maspeth, New York	6/30/56 9/30/56	\$ 1,276.00 430.00
Donner Richard Lumber Co.	3/31/57 6/30/57	\$ 1,885.00 2,335.00
Donner Richard Lumber Co.	3/31/58 6/30/58	\$ 2,925.00 1,275.00
Donner Richard Lumber Co.	3/31/59 6/30/59	\$ 2,400.00 2,400.00

DEPARTMENT OF HEALTH, EDUCATION & WELFARE
(EXHIBIT B)

<u>SOURCE OF EARNINGS</u>	<u>PERIOD ENDED</u>	<u>AMOUNT</u>
Donner Richard Lumber Co.	3/31/60	\$ 2,400.00
	6/30/60	2,400.00
Donner Richard Lumber Co.	3/31/61	\$ 2,600.00
	6/30/61	2,200.00
Donner Richard Lumber Co.	3/31/62	\$ 2,600.00
	6/30/62	2,200.00
Imperial Lumber Corp. Box 334 Hicksville, New York	6/30/72	\$ 1,200.00
J.T. Sullivan Lumber Co. Inc. 855 Conklin Street Farmingdale, New York	9/30/62	\$ 1,800.00
	12/31/62	150.00
Self-Employment	Year 1963	\$ 1,680.06
	Year 1964	2,959.63
	Year 1965	1,247.07
	Year 1966	883.12
	Year 1967	829.00
	Year 1967	829.00
	Year 1967 (Decrease)	829.00
	Year 1968	1,805.00
	Year 1969	1,632.00
	Year 1970	1,424.00

We have no record of any other earnings being reported for the period specified above.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

EASTERN DISTRICT OF NEW YORK

-----X
 PUBLIC SERVICE MUTUAL
 INSURANCE COMPANY,

Plaintiff,

v.

UNITED STATES OF AMERICA,
 and DONALD GRUSKOFF,

Defendants.
 -----X

CIVIL ACTION NO. 73 C 330

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Based upon the evidence and testimony presented at the Trial on December 3, 1974, and in accordance with the opinion filed herein, the Court makes the following findings of fact and conclusions of law:

1. The plaintiff filed an interpleader action seeking to interplead \$50,000.00 between the United States of America, and Donald Gruskoff, both of whom claimed they were entitled to the \$50,000.00.
2. On October 22, 1971, Raymond Daniels was arrested on a narcotic violation and was incarcerated.
3. Public Service Mutual Insurance Company issued bail bond No. 90-B-18267 in the amount of \$100,000.00 for the release of Raymond Daniels from incarceration.
4. As collateral security for the issuance of bail bond No. 90-B-18267, Donald Gruskoff presented \$50,000.00 to Public Service Mutual Insurance Company.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. Donald Gruskoff testified that he was only a casual friend of Teddy Johnson, a gambler, and the person who asked that he, Donald Gruskoff post as collateral security toward the \$100,000.00 bail bond of Raymond Daniels, the sum of \$50,000.00. He further testified that his father, William Gruskoff, who was a lawyer but who has since died, loaned Donald Gruskoff the \$50,000.00 for this purpose. No written evidence of the purported loan was ever executed.

6. The Court finds the testimony of Donald Gruskoff, unbelievable and to the contrary has determined that Donald Gruskoff was nothing more than a nominee or agent for Raymond Daniels and that the sum of \$50,000.00 deposited as collateral for his bail bond was the property of Raymond Daniels. The Court further finds that Donald Gruskoff's story was a tissue of falsehood and nothing more than an attempt to avoid the claim of the United States for unpaid federal income taxes asserted against Public Service Mutual Insurance Company with respect to property of the taxpayer, Raymond Daniels, in its possession.

7. Included in the record was documentary proof submitted by the Government which revealed that Donald Gruskoff's father, the alleged source of the loan to Donald Gruskoff of said \$50,000.00, had an extremely limited amount of income for the years 1943 through 1970 and that William Gruskoff, before his death, could not have amassed any substantial sum of money and certainly no sum in the neighborhood of \$50,000.00.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The \$50,000.00 interpleaded by Public Service Mutual Insurance Company, as property belonging to Raymond Daniels, was subject to an Internal Revenue levy served upon Public Service on April 21, 1972. The levy, in the amount of \$718,694.10, was executed pursuant to an assessment made against Raymond Daniels on October 29, 1971 for unpaid federal income taxes for the period January 1, 1971 to October 23, 1971, pursuant to Section 6851 of the Internal Revenue Code of 1954.

9. Since the amount of the levy and the tax lien asserted against the fund by the United States exceeded the amount of the interpleaded fund the plaintiff is not entitled to an attorney's fee or to costs for instituting said action. Such fees and costs in derogation of the lien rights of the United States are prohibited by law.

CONCLUSIONS OF LAW

10. The interpleaded fund of \$50,000.00 is property belonging to the taxpayer, Raymond Daniels, and consequently is subject to the tax lien of the United States which arose on October 29, 1971, the date on which unpaid federal income taxes for the terminated year January 1, 1971 to October 23, 1971, were assessed against the taxpayer. Sections 6321 and 6322 of the Internal Revenue Code of 1954.

11. On April 21, 1972, when the levy was served upon Public Service Mutual Insurance Company seizing all of the taxpayer's property, in its possession, the interpleaded fund

FINDINGS OF FACT AND CONCLUSIONS OF LAW

was not subject to any attachment or execution under any judicial process. Therefore, the United States was entitled to recover said fund as property belonging to Raymond Daniels. Sections 6331 and 6332 of the Internal Revenue Code of 1954; United States v. Sterling National Bank & Trust Company of New York, 494 F. 2d 919, 921 (C.A. 2, 1974); United States v. Manufacturers Trust Company, 198 F. 2d 366 (C.A. 2, 1952).

12. The claim of Public Service Mutual Insurance Company for attorney fees and costs must be denied in view of the fact that such an allowance would reduce the amount of the recovery of the United States on its lien claim against the fund, United States v. State National Bank of Connecticut, 421 F. 2d 519, 521 (C.A. 2, 1970); and United States v. Wilson, 333 F. 2d 147 (USDC D N.J., 1964).

DAVID G. TRAGER
United States Attorney
Eastern District of New York

By: 

GEORGE H. WILLET
Assistant United States Attorney

OF COUNSEL:

GARLAND C. TANES
Trial Attorney
Tax Division
General Litigation Section
U. S. Department of Justice
Washington, D.C. 20530
Telephone: (202) 739-3035

CERTIFICATE OF SERVICE.

I hereby certify that a copy of Fact and Conclusions of Law and Order were placed in the United States mail, postage prepaid, this 4th day of March, 1975, and properly addressed to Abner B. Rosenthal, Esquire, Attorney for the Plaintiff, 393 Seventh Avenue, New York, New York 10001, Samuel Stone, Esquire, Attorney for Donald Gruskoff, 150 Broadway, New York, New York 10038 and Cally & Cally, Esquires, Attorneys at Law, 150 Broadway, New York, New York 10038.

GARLAND C. TANKS
Trial Attorney
Tax Division
General Litigation Section
U. S. Department of Justice
Washington, D. C. 20530
Telephone: (202) 739-3035

JUDGMENT.

CLOSEDUNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORKFILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. NY.

★ MAR 25 1975 ★

PUBLIC SERVICE MUTUAL
INSURANCE COMPANY,

Plaintiff,

v.

UNITED STATES OF AMERICA,
and DONALD GRUSKOFF,

Defendants.

TIME A.M. _____
P.M. _____

CIVIL ACTION NO. 73 C 330

J U D G M E N T

M'FILMED

In accordance with the opinion of the Court and the findings of fact and conclusions of law in which the Court determined that the interpleaded fund of \$50,000.00 is the property of the taxpayer, Raymond Daniels and as such is subject to a federal tax lien and levy in excess of the amount the interpleaded fund, it is hereby

ORDERED, that Public Service Mutual Insurance Company is directed to honor the levy of the United States by paying over to the United States the interpleaded fund of \$50,000.00 to be applied upon the federal income tax liability of Raymond Daniels for the period January 1, 1971 to October 23, 1972, and upon payment thereof, Public Mutual Insurance Company shall be discharged of any further liability, with respect to said

JUDGMENT

interpleaded fund, to the United States and to Donald Gruskoff, individually, and as agent for any other person for whom he purported to act in this proceeding; and it is further

ORDERED that the claims of Public Service Mutual Insurance Company for attorneys fees and costs and the claim of Donald Gruskoff be dismissed, each party to bear his own costs.

✓
✓
Robert B. Buchanan
UNITED STATES DISTRICT JUDGE

DATED: *Brooklyn, New York*
March 25 1975

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
PUBLIC SERVICE MUTUAL INSURANCE
COMPANY

Plaintiff

against

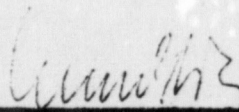
FILE NUMBER

UNITED STATES OF AMERICA AND DONALD
GRUSKOFF

Defendants
-----X

Notice is hereby given that DONALD GRUSKOFF, defendant
above named, hereby appeals to the United States Court of
Appeals for the Second Circuit from the final judgment entered
in this action on the 25th day of March, 1975.

Dated: April 2nd, 1975



SAMUEL STONE, ESQ.
Attorney for the Defendant
DONALD GRUSKOFF
Office & P.O. Address
150 Broadway
New York, New York 10038

TO: Samuel D. Muney, Esq.
Attorney for Plaintiff
393 Seventh Avenue
New York, New York 10001.

Garland C. Tanks, Esq.
Trial Attorney for USA
General Litigation Section
Tax Division
U.S. Department of Justice
Washington, D.C. 20530

**United States Court of Appeals
for the Second Circuit**

The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

Public Service Mutual Insurance Company**Plaintiff-Appellant****against****United States of America****Defendant-Appellee****and****Donald Gruskoff****Defendant-Appellant****State of New York, County of New York, ss.:**

Raymond J. Braddick, , being duly sworn deposes and says that he is
agent for Samuel Stone Esq. the attorney
for the above named **Defendant-Appellant** herein. That he is over
21 years of age, is not a party to the action and resides at **Levittown, New York**

That on the **20th.** day of **May** , 1975, he served the within

Appendix

upon the attorneys for the parties and at the addresses as specified below

1. **Julius Gantman Esq.**
Attorney for Plaintiff-Appellee
393 7th. Avenue
New York, New York
2. **Garland C. Tanks**
Assistant United States Attorney,
General Litigation Section
Tax Division
Attorney for Defendant-Appellee
United States Department of Justice
Washington D.C. 20530

by depositing **3 true copies to each**

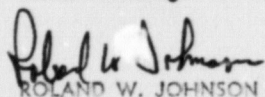
to each of the same securely enclosed in a post-paid wrapper in the Post Office regularly maintained by the United States Government at

90 Church Street, New York, New York

directed to the said attorneys for the parties as listed above at the address as mentioned, that being the addresses within the state designated by them for that purpose, or the places where they then kept offices between which places there then was and now is a regular communication by mail.

Sworn to before me, this 20th.

day of May, 1975.



ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705

Qualified in Delaware County
Commission Expires March 30, 1977

